

TENNESSEE LOCAL DEVELOPMENT AUTHORITY
JULY 14, 2016
AGENDA

1. Call meeting to order
2. Approval of minutes from the TLDA meeting of June 9, 2016
3. Update on the Qualified Energy Conservation Bond (QECB) program
4. Review of revisions to State Revolving Fund (SRF) loan agreements for new applicants as of July 1, 2016
5. Public hearing and discussion on proposed SRF Policy and Guidance for Borrowers
6. Adjourn

TENNESSEE LOCAL DEVELOPMENT AUTHORITY

June 9, 2016

The Tennessee Local Development Authority (the “Authority” or “TLDA”) met on Thursday, June 9, 2016, at 1:15 p.m. in the Executive Conference Room, State Capitol, Nashville, Tennessee. The Honorable Tre Hargett, Secretary of State, was present and presided as Vice-Chair.

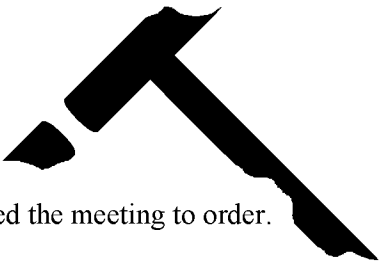
The following members were also present:

The Honorable Justin Wilson, Comptroller of the Treasury
The Honorable David Lillard, State Treasurer
Angela Scott, Proxy for Commissioner Larry Martin, Department of Finance and Administration
Mr. Pat Wolfe, Senate Appointee
Dr. Kenneth Moore, House Appointee

The following member was absent:

The Honorable Bill Haslam, Governor

Recognizing a physical quorum present, Mr. Hargett called the meeting to order.

Mr. Hargett asked for a motion to approve the minutes of April 7, 2016. Mr. Wilson made a motion to approve the minutes, and Mr. Wolfe seconded the motion. The minutes were unanimously approved. 

Mr. Hargett recognized Ms. Sandi Thompson, Director of the Office of State and Local Finance (OSLF), to present the next item of business regarding a request from the Anderson County Water Authority (ACWA) to issue revenue bonds in an amount not to exceed \$8,975,000 on parity with its SRF loan. Ms. Thompson stated a request letter from the ACWA was included in the meeting materials and that the OSLF conducted a review to determine that ACWA met the requirements set forth in the loan agreement to issue additional debt payable from the revenues of the system. Ms. Thompson stated that OSLF had determined that ACWA met the requirements, as set forth in a letter to the Authority. (A copy of a letter from the OSLF was included in the meeting materials.) Mr. Hargett made a motion to approve the request. Dr. Moore seconded the motion. Mr. Wilson commented that because the ACWA’s proposed debt issuance involved the refinancing of its series 2010 bonds which currently held a superior lien position to the SRF debt, this refunding, even with the approval to issue on parity gave the Authority and the SRF program a higher lien position than it previously had in relation to the refunded debt. Ms. Thompson concurred with his statement. The motion was unanimously approved.

Mr. Hargett recognized Mr. Sherwin Smith from the Tennessee Department of Environment and Conservation’s (TDEC) State Revolving Fund (SRF) loan program to present the SRF priority ranking lists for the Clean Water and Drinking Water SRF loan programs. (Mr. Smith provided a copy of each list to the Authority members.) Mr. Smith stated that these lists were for the 2016 fiscal year and will be included with its grant application that will be submitted to the Environmental Protection Agency (EPA). Mr. Smith stated that per the TLDA’s request, TDEC had reviewed its priority ranking procedures in regard to breaking ties. Mr. Smith stated a memo had been sent to the TLDA regarding the review and change in procedure. (A memo dated July 23, 2015 noted that in the event of a tie, priority would be given to local governments with smaller populations instead of using alphabetical order.) The lists presented at this meeting reflected revised procedures. Furthermore, Mr. Smith stated that at the encouragement of EPA, TDEC intends to focus on projects that are ready to proceed. However, he stated that TDEC acknowledges that smaller less affluent communities may not be able to proceed quickly and TDEC intends to address such situations appropriately. There was no further discussion and no action was required on this item.

Mr. Hargett stated that the next item of business was consideration for approval of Clean Water SRF loan requests. Mr. Hargett recognized Mr. Smith to present the requests. Because a potential conflict of interest might exist with one board member, Mr. Hargett asked Mr. Smith to present the two requests from the city of Franklin separate from the other loan requests. Mr. Smith presented the two requests from the city of Franklin.

- Franklin (CG2 2016-357)—Requesting \$1,822,741 for a new SCADA system to encompass the city's water distribution and collection systems and centralized operations at the city's public works facility, as well as, their interconnectivity to the new control systems at the Franklin Water Treatment Plant and the Franklin Water Reclamation Facility; recommended interest rate of 0.89% based on the Ability to Pay Index (ATPI).
- Franklin (CG2 2016-357)—Requesting \$1,677,259 for a new SCADA system to encompass the city's water distribution and collection systems and centralized operations at the city's public works facility, as well as, their interconnectivity to the new control systems at the Franklin Water Treatment Plant and the Franklin Water Reclamation Facility; recommended interest rate of 0.89% based on the Ability to Pay Index (ATPI).

Mr. Smith stated that these loans were companion loans for the same project with a total project cost of \$3.5 million. He noted that loan CG2 2016-357 used up the remaining capitalization grant funds for fiscal year 2012.

Mr. Wilson moved for approval of the loans, and Mr. Lillard seconded the motion. Mr. Hargett asked the Authority members to respond Aye, Nay, or Abstain.

Everyone, except for Dr. Moore, responded Aye. Dr. Moore abstained from the vote. The motion was approved.

Mr. Smith then presented the unobligated fund balance. He stated that the balance was \$174,214,688 as of April 7, 2016. Upon approval of the loan requests to be presented, the funds available for loan obligations would decrease to \$122,487,688. He then described the remaining loan requests:

- Chattanooga (SRF 2016-357)—Requesting \$42,500,000 for Wastewater Treatment Plant (WWTP) improvements (secondary clarifiers upgrade) and collections system rehabilitation (DuPont Sewer Basin and Friars Branch/South Chickamauga Creek Interceptor rehab); recommended interest rate of 1.29% based on the Ability to Pay Index (ATPI).
- Greenbrier (CW5 2016-370)—Requesting \$1,500,000 (\$1,275,000 loan; \$225,000 principal forgiveness) for WWTP upgrades (construction of a Sequencing Batch Reactor (SBR), digester, and effluent filter; add blowers, and replace pumps and controls); recommended interest rate of 0.32% based on the ATPI.
- Greenbrier (SRF 2016-371)—Requesting \$2,227,000 for WWTP upgrades (construction of a SRB, digester, and effluent filter; add blowers, and replace pumps and controls); recommended interest rate of 0.32% based on the ATPI.
- Jackson Energy Authority (CG2 2016-368)—Requesting \$2,000,000 for Green—Inflow/Infiltration (I/I) correction (rehabilitation of approximately 600,000 linear feet of sewer lines); recommended interest rate of 1.25% based on the ATPI.

Mr. Lillard moved for approval of the Clean Water SRF loans, and Mr. Wilson seconded the motion. The motion passed unanimously.

Mr. Hargett stated that the next item of business was consideration for approval of Drinking Water State Revolving Fund (SRF) loan requests. He asked Mr. Smith to present the requests. Mr. Smith first presented the unobligated fund balance. He stated the balance was \$45,464,402 as of April 7, 2016. The balance increased by \$759,472 due to a partial prepayment from the Giles County/ Fairview Utility District. Upon approval of the loan requests to be presented, the funds available for loan obligations would decrease to \$37,448,374. He then described the loan requests:

- Cleveland (DWF 2016-172)—Requesting \$3,725,500 for a new transmission main project consisting of the installation of approximately 27,150 linear feet of 24-inch diameter waterline along Old Charleston Road, beginning at the intersection of Tasso Road heading north to North Lee Highway and continuing of Lauderdale Highway where the waterline will turn east toward Dry Valley Road ending at the Hiwassee Utilities Commission Water Treatment Plant; recommended interest rate of 1.11% based on the ATPI.
- Fayetteville (DWF 2016-175)—Requesting \$5,050,000 for water distribution system improvements; recommended interest rate of 1.12% based on the ATPI.

Mr. Smith stated that although the debt service for the city of Fayetteville was somewhat high, rates were sufficient to repay the loan, and TDEC recommended approval of the loan.

Mr. Hargett moved for approval of the Drinking Water SRF loans, and Mr. Lillard seconded the motion. The motion passed unanimously.

Hearing no further business, Mr. Hargett asked for a motion to adjourn. Mr. Lillard made a motion to adjourn, and Mr. Wolfe seconded the motion. The meeting was adjourned.

Approved on this ____ day of _____, 2016.

Respectfully submitted,

Sandra Thompson
Assistant Secretary

DRAFT

QECB Program Updates – 7.1.16

The updates below are current as of June 27, 2016. TDEC Office of Energy Programs expects to receive the next round of updates by July 29, 2016.

Suballocations:

Memphis Green Communities Program

The Crosstown Concourse issuance of \$8,316,000 closed on February 18, 2015. The Self Tucker/Universal Life and Knowledge Quest issuances, which had allocations of \$2,015,300 million and \$340,700, respectively, closed on April 29th, 2015. These three projects all focus on building energy efficiency retrofits.

Crosstown Concourse:

Bonds in the amount of \$8,316,000 were issued on February 18, 2015 for the Crosstown Concourse project. To date, Crosstown Building Owner LLC has successfully drawn down \$7,715,105.57 in QECB proceeds from Regions Bank (serving as Trustee) over 11 draw requests. Draw requests are accompanied by a Buy American certification and statement of energy conservation to ensure compliance.

As of March 22, 2016, Crosstown is approximately 81% complete with work associated with QECBs. HVAC, building cooling towers, exhaust fans and ventilation, and boilers and flues are complete. Work remains on windows and interior lighting.

Knowledge Quest:

Bonds in the amount of \$340,700 were issued on April 29, 2015 for the Knowledge Quest project. To date, Knowledge Quest has successfully drawn down \$198,232.86 in QECB proceeds from Regions Bank (serving as Trustee) over eight draw requests. Draw requests are accompanied by a Buy American certification and statement of energy conservation to ensure compliance.

As of May 19, 2016, Knowledge Quest has purchased doors, windows, and roofing material for the Green Leaf Apartments building. Windows and doors have been installed and related roof work is in process. The contractor has begun the work of preparing the structure for upgrades to plumbing and electrical work.

Universal Life Insurance Building:

Bonds in the amount of \$2,015,300 were issued on April 29, 2015 to Self Tucker Properties, LLC for the Universal Life Insurance Building project. To date, Self Tucker Properties, LLC has successfully drawn down \$215,701.04 in QECB proceeds in one draw request from Regions Bank (serving as Trustee). Draw requests are accompanied by a Buy American certification and statement of energy conservation to ensure compliance.

To date, HVAC equipment associated with the building renovation for the Universal Life Insurance Building has been installed.

Knox County

OEP recommended and TLDA approved a \$12,450,000 suballocation for the installation of solar PV on fourteen (14) targeted sites across the county, notably public school rooftops. Issuance on this project closed on June 30, 2015.

At this time, all sites are producing power. Systems are reporting through the DrakeR system, and Knox County is working to schedule training for the team, in order to utilize the data from the DrakeR system for reporting on energy savings.

City of Lebanon

OEP recommended and TLDA approved a \$3,500,000 suballocation for the construction and installation of a waste-to-energy gasification unit. The City of Lebanon is working with PHG Energy on this project. Issuance on this project closed on April 24th, 2015.

As of April 15, 2016, the Planning Commission has approved the project site and the Project Grading Permit has been approved and received. The P&ID has been finalized and construction is due to start on April 1, 2016. All major equipment has been selected and purchased. PHGE has begun receipt of several pieces of equipment such as: project fans; control valves; instruments and heat exchangers. The major gasifier sections have been constructed and the internal casting completed. The project is expected to be complete by August 2016.

LLJ Allocations: Clarkesville, Chattanooga and Hamilton County

City of Clarksville is utilizing the city's Large Local Jurisdiction (LLJ) allocation for a street lighting improvement project.

This issuance closed on March 23, 2016, and the project is underway. The City of Clarksville issued only \$1,240,000 of its \$1,241,344 QECB allocation and decided to reallocate the difference of \$1,344 back to the State on June 10, 2016. This has resulted in a revised total that is available for suballocation. This new total is \$26,936,095 (reflected in QECB Update – Total State Allocation June 2016).

Chattanooga and Hamilton County are evaluating projects for which they will use their QECB allocations.

3rd RFP

There have been no formal proposals submitted under the third (3rd) RFP to date, but OEP continues to receive inquiries from potential applicants.

QECB Update – Total State Allocation June 2016

Total State Allocation	64,676,000	
Allocation for Large Local Jurisdictions		35,998,072
Allocation to State		28,677,928

	Utilized/Retained	Reallocated
Allocation for Large Local Jurisdictions	35,998,072	
Chattanooga ¹	1,767,919	
Clarksville ³	1,240,000	
Hamilton County ⁴	1,668,015	
Memphis ²	7,014,356	
Metro Nashville/Davidson County ⁵	6,441,971	
Other LLJs' Reallocations to State		17,865,811
	18,132,261	17,865,811

Amount Available for Suballocation / RFP (State Allocation plus Reallocations)	46,543,739
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Closed Issuances

Memphis ²	3,657,644
Knox County ⁶	12,450,000
City of Lebanon ⁷	3,500,000

Total Allocation Remaining	26,936,095
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¹Chattanooga is currently evaluating projects for which it will use QECBs.

²Memphis combined its initial \$7,014,356 QECB allocation and its RFP suballocation of \$3,657,644 to support energy improvement projects under its Green Communities Program. Bond issuance closed for one project, Sears Crosstown (\$8,316,000), on February 18, 2015. Bond issuance for two other projects, Universal Life Insurance Building / Self Tucker (\$2,015,300) and Knowledge Quest (\$340,700), closed on April 29, 2015.

³Clarksville issued an RFP for a street light improvement project. Bond issuance closed for this project (\$1,240,000) on March 23, 2016.

⁴Hamilton County has not yet identified a project for which they will use QECBs.

⁵Metropolitan Nashville issued its QECB allocation (\$6,440,000) in August 2012 for energy improvements to its arena.

⁶The bond issuance for Knox County's suballocation project (\$12,450,000), which will fund the installation of solar PV on 13 targeted sites across the county, closed on June 30, 2015.

⁷ The bond issuance for Lebanon's suballocation project (\$3,500,000), which will fund the installation of a waste-to-energy gasification unit, closed on April 24, 2015.

**REVOLVING FUND LOAN AGREEMENT
FOR TAX REVENUE ENTITIES
(i.e. TOWNS/CITIES/COUNTIES)**

This Agreement is among the Tennessee Department of Environment and Conservation (the "Department"), the Tennessee Local Development Authority (the "Authority") and ~~the _____~~ (the "Local Government"), which is a Tennessee governmental entity authorized to own, operate, and manage ~~(water and/or wastewater)~~ facilities. The purpose of this Agreement is to provide for the financing of all or a portion of a _____ (water/wastewater) facility ~~(the "Project")~~ by the Local Government. The Local Government submitted an application for the financing dated _____ which is ~~made by reference a part of hereby incorporated into~~ this Agreement.

1. **DEFINITIONS.** Unless the context in this Agreement indicates another meaning, the following terms shall have the following meaning:

- (a) "Administrative fee" means the fee to be collected by the Authority for administration of the loan in accordance with Tenn. Code Ann. Sections 68-221-1004(a) and 68-221-1204(a), both as amended;
- (b) "Agreement" means this agreement providing financing for the Project from the Fund;
- ~~(c) "Clean Water Act" means the Water Pollution Control Act of 1972, PL 92-500, 33 U.S.C. Sections 1251 et. seq., as amended, and rules and regulations promulgated thereunder;~~
- ~~(d)~~(c) "Facility" means either a wastewater facility or a water system;
- ~~(e)~~(d) "Fund" means:
 - (1) For wastewater projects, the wastewater revolving loan fund created by the Tennessee Wastewater Facilities Act of 1987, Tenn. Code Ann. Sections 68-221-1001, et seq., as amended, and rules and regulations promulgated thereunder; or
 - (2) For water projects, the drinking water revolving loan fund created by the Drinking Water Revolving Loan Fund Act of 1997, Tenn. Code Ann. Sections 68-221-1201, et seq., as amended, and rules and regulations promulgated thereunder;
- ~~(f)~~(e) "Local Government" means the governmental entity borrowing under this Agreement described in (1) Tenn. Code Ann. Section 68-221-1003(7)(A), as amended, if a wastewater facility and (2) Tenn. Code Ann. Section 68-221-1203(6), as amended, if a water system;
- ~~(g) "Program Loan" and "Loan Program Agreement" have the meanings established by TCA Section 4-31-102, as amended;~~
- (f) "Obligations" means bonds, notes and any other evidence of indebtedness lawfully issued or assumed by the Local Government;
- ~~(h)~~(g) "Project" means the activities or tasks concerning a facility described in the application submitted by the Local Government to be financed pursuant to this Agreement;
- ~~(i)~~(h) "Project Cost" means the total amount of funds necessary to complete the Project;

- (i) "Project Loan" means the moneys loaned from the Fund to finance the Project and, except for principal forgiven, if any, required to be repaid pursuant to this Agreement;
- (k) ~~"Safe Drinking Water Act" means the Safe Drinking Water Act, Title XVI of Public Health Service Act, 42 U.S.C. Sections 300f et seq., as amended, and rules and regulations promulgated thereunder;~~
- (j) "Revenues" means all fees, rents, tolls, rates, rentals, interest earnings, or other charges received or receivable by the Local Government from the water or wastewater system which is the Project, or of which the Project is or will be a component, including any revenues derived or to be derived by the Local Government from a lease, agreement or contract with any other local government, local government instrumentality, the state, or a state or federal agency for the use of or in connection with the system, or all other charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the Local Government from the operation of the system or arising from the system;
- (k) ~~"State" shall mean~~ means the state of Tennessee acting through the Department and the Authority, jointly or separately, as the context requires;
- (l) ~~"State-Shared Taxes" has the meaning established by Tenn. Code Ann. Section 4-31-102, as amended; and~~
- (m) ~~"Unobligated State-Shared Taxes" means State-Shared Taxes which have not been pledged or applied to any other prior indebtedness.~~

2. PROJECT

(a) Description. The description of the Project is ~~contained as~~ described in the ~~Application~~ application submitted by the Local Government.

(b) Funding Sources. The Local Government estimates the Project Cost to be \$ _____ which is expected to be funded as follows:

(1) Project Loan (less principal \$ forgiveness,	
if applicable)	
(2) Principal Forgiveness (if applicable)	\$
(3) Local Funds	\$
(4) Other Funds	\$

TOTAL	\$

3. LOAN

(a) Loan and use of proceeds. The State shall lend to the Local Government from moneys available in the Fund an aggregate principal amount not to exceed _____ (the "Project

~~Loan")~~ _____ to bear interest as described in (b) below. The Project Loan shall be used by the Local Government for completion of the Project ~~described in the Application~~ and in accordance with engineering plans and specifications and special conditions, approved and required by the Department and hereby incorporated into this Agreement. Interest on the Project Loan will begin to accrue upon the first disbursement of the Project Loan pursuant to Section 5 ~~hereof~~ of this Agreement.

- (b) Interest rate. The rate of interest for this Project Loan is that rate established by the Authority at the meeting at which this Project Loan is approved and stated on the payment schedule which is incorporated into and attached to this Agreement ~~and attached hereto~~.
- (c) Administrative fee. The Authority shall collect a fee equal to 8 basis points of the total Project Loan, where one basis point is equal to one-hundredth of one percent (0.01%). This fee shall be payable in monthly installments equal to one-twelfth (1/12) of the annual fee amount as stated on the payment schedule.
- (d) Payment schedule. The Local Government expressly agrees to make all payments of principal and interest in accordance with the payment schedule, including the form of payment (currently electronic funds transfer), as it is from time to time revised by the State. A revision of the payment schedule shall not be deemed to be an amendment of this Agreement.

4. REPAYMENT OF PROJECT LOAN.

(a) Payments.

- (1) The Local Government promises to repay to the order of the State the Project Loan plus interest, payable in installments on the 20th day of each month in accordance with the payment schedule established by the Authority and attached to this Agreement. The payment schedule will require payments of interest to begin after the first disbursement pursuant to Section 5 of this Agreement. The payment schedule will require repayments of principal to begin ~~either (1) within~~ the earlier of:

(A) Within ninety (90) days after the Project is completed; or, ~~if the Project consists solely of planning, replanning, or design work, after the Project is complete;~~ or (2) within

(B) Within one hundred twenty (120) days after ninety percent (90%) of the Project Loan has been disbursed, ~~whichever event occurs earlier. Provided, however,~~

- (2) Notwithstanding Section 4(a)(1), the Authority may agree in the instance of a newly created water system to defer the commencement of principal repayment for no more than one year after the Project is completed.

- ~~(a)~~(b) Reduction. The Project Loan, and the required payments made pursuant to the payment schedule, shall be reduced to reflect:

(1) Funding not listed in Section 2(b) which subsequently becomes available; or

(2) The amount actually disbursed by the State to the Local Government pursuant to the Agreement as the Project Loan.

If any of the conditions set out in Section 4(b)(1) or (b)(2) occur, a new payment schedule reflecting such changes shall be submitted to the Local Government to be attached to this Agreement, superseding any previous schedules.

(c) Prepayment. The Local Government, at its option, may prepay all or any portion of the Project Loan.

(d) Principal Forgiven. A portion of the ~~SRF funding for~~ original principal amount of the Project Loan ~~shall~~ may be forgiven by the State. The principal forgiven shall be _____ per cent (%) of the original principal amount of the Project Loan, or if the full original amount of the Project Loan is not used, then _____ percent (%) of the amount of the Project Loan actually disbursed. Notwithstanding Section 3, no interest shall accrue on the amount of principal forgiven pursuant to this Section 4(d).

5. DISBURSEMENT OF PROJECT LOAN. Each request by the Local Government for disbursement of the Project Loan shall constitute a certification by the Local Government that all representations made in this Agreement remain true as of the date of the request and that no adverse developments affecting the financial condition of the Local Government or its ability to complete the Project or to repay the Project Loan plus interest have occurred since the date of this Agreement unless specifically disclosed in writing by the Local Government in the request for disbursement. Submitted requests for disbursement must be supported by proper invoices and other documentation required by and acceptable to the Department and the Authority.

After the Department has certified and the Authority has approved a request for disbursement, the Authority will disburse the Project Loan during the progress of the Project. Each disbursement shall be by electronic funds transfer or such other form of payment as specified in the payment schedule and shall be equal to that portion of the unpaid principal amount incurred to the date of the Local Government's request for disbursement. The amount of any principal forgiven shall be allocated on a pro-rata basis to each disbursement made.

No more than 90% of the Project Loan shall be paid to the Local Government prior to the time: 1) the construction of the Project has been completed, 2) the facilities constituting the Project are in the opinion of the Department in proper operation, and 3) the Project has been approved by the Department; ~~at that time.~~ Following approval of the Project by the Department, the remaining 10% of the Project Loan may be paid to the Local Government. Provided, however, that if this Project Loan is for planning or replanning and design, payments may be made prior to the completion of construction of the Project for the full amount of costs associated with the planning or replanning and design.

6. AMENDMENT.

(a) Increase in Project Loan. If the final Project Cost is greater than is estimated in Section 2(b), then the Project Loan may be increased by a subsequent agreement executed by the parties ~~hereto~~ to this Agreement (the amount of such increase may be subject to a different interest rate) if the following conditions are fulfilled:

- (1) Amounts in the Fund are authorized and available for such increase;
- (2) The increased Project Loan otherwise meets the applicable statutory requirements and the ~~regulations~~ rules adopted thereunder; and
- (3) Such increase in this Project Loan does not result in any violation or breach of any contract, resolution, or ordinance of the Local Government.

- (b) Other Amendments and Modifications. Any other amendment or modification of this Agreement must first be approved by the Authority and must be in writing executed by the parties hereto to this Agreement.

7. REPRESENTATIONS AND COVENANTS OF LOCAL GOVERNMENT. The Local Government hereby represents, agrees, and covenants with the State as follows:

- (a) To construct, operate, and maintain the Project in accordance, and to comply, with all applicable federal and State statutes, rules, regulations, procedural guidelines, and grant conditions;
- (b) To comply with the Project schedule, engineering plans and specifications, and any and all special conditions established and/or revised by the Department;
- (c) To commence operation of the Project on its completion; and not to contract with others for the operation and management of, or to discontinue operation or dispose of, the Project without the prior written approval of the Department and the Authority;
- (d) To provide for the Local Government's share of the cost of the Project;
- ~~(e)~~ To advise the Authority before pledging or encumbering its State Shared Taxes;
- ~~(f)~~(e) To comply with applicable federal requirements including the laws and executive orders listed on Exhibit A to this Agreement;
- ~~(g)~~(f) To advise the Department before applying for federal or other state assistance for the Project;
- ~~(h)~~(g) To establish and maintain adequate financial records for the Project in accordance with generally accepted government accounting principles; to cause to be made an annual audit acceptable to the Comptroller of the Treasury of the financial records and transactions covering each fiscal year; and to furnish a copy of such audit to the Authority. In the event of the failure or refusal of the Local Government to have the annual audit prepared, then the Comptroller of the Treasury may appoint an accountant or direct the Department of Audit to prepare the audit at the expense of the Local Government;
- ~~(i)~~(h) To provide and maintain competent and adequate engineering supervision and inspection of the Project to insure that the construction conforms with the engineering plans and specifications approved ~~Plans and Specifications~~ by the Department;
- ~~(j)~~(i) To abide by and honor any further guarantees or ~~securities~~granting of security interests as may be required by the State which are not in conflict with state or federal law;
- ~~(k)~~(j) To do, file, or cause to be done or filed, any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created hereunder;
- ~~(l)~~(k) To establish and collect, and to increase, user fees and charges and/or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due under this Agreement, as well as the other costs of operation and maintenance including depreciation and debt service of the system of which the Project is a part;
- (l) To receive the approval of the Authority prior to issuing any Obligations if the Obligations are intended to be on parity or superior to the lien position created under this Agreement;

- (m) To notify the Assistant Secretary to the Authority in writing prior to issuing any Obligations that are payable solely from all or any part of the Revenues if such Obligations are intended to be subordinate to the lien position created under this Agreement;
- (n) To receive the approval of the Authority prior to pledging or encumbering the Local Government's State-Shared Taxes; and
- (o) The Local Government is subject to the jurisdiction of the Water and Wastewater Financing Board ("WWFB") established in Tenn. Code Ann. Section 68-221-1008 or of the Utility Management Review Board ("UMRB") created in Tenn. Code Ann. Section 7-82-701 as provided by law. If the Authority, in its sole discretion, determines that the Local Government's obligations under this Agreement have been or may be impaired, the Authority may refer the Local Government to the WWFB or UMRB (each a "Board") as appropriate. In the event of default under this Agreement, the Authority shall refer the Local Government to the Board having jurisdiction over the entity. In such event, the Local Government covenants, to the extent permitted by law, to request advisory technical assistance from the Board and to request that the Board propose any and all management, fiscal and/or rate changes necessary to enable the Local Government to fulfill its obligations to the Authority under this Agreement. The Local Government agrees to supply the Board with any information that the Board may request in connection with its analysis of the Local Government's system. The Local Government agrees that it will implement any and all technical, management, fiscal and/or rate changes recommended by the Board and determined by the Authority to be required for the Local Government to fulfill its obligations to the Authority under this Agreement.

8. SECURITY AND DEFAULT.

- (a) As security for payments due under this Agreement, the Local Government pledges users fees and charges and/or ad valorem taxes, and covenants and agrees that it shall increase such fees or increase or levy, as the case may be, ad valorem taxes as needed to pay the monthly installments due ~~here~~ under this Agreement, as well as the other costs ~~of~~ of operation and maintenance of the system, including depreciation. The Local Government covenants to establish and collect such fees and taxes and to make such adjustments to raise funds sufficient to pay such monthly payments and costs but to create only a minimum excess. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Agreement.

As further security for payments due under this Agreement, the Local Government pledges and assigns subject to the provisions herein its Unobligated State-Shared Taxes in an amount equal to the maximum annual debt service requirements under this Agreement. ~~In the event~~ If the Local Government fails to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail a written notice of such failure to the Local Government within 5 days of such failure. In the event, and the Authority shall suspend making disbursements as provided in Section 5 until such delinquency is cured. If the Local Government shall fail ~~fails~~ to cure payment delinquency within 60 days of the receipt of such notice, such failure shall constitute an event of default under this Agreement and, in addition, the Authority shall notify the Commissioner of Finance and Administration of the State of Tennessee of the default of the Local Government and the assignment of Unobligated State-Shared Taxes under this Agreement. Upon receipt of such notice, the Commissioner shall withhold such sum or part of such sum from any State-Shared Taxes which are otherwise apportioned to the Local Government and pay only such sums necessary to liquidate the delinquency of the Local Government to the Authority for deposit into the fund. The Local Government acknowledges that it has no claim on State-Shared Taxes withheld as permitted under this Agreement.

If the Local Government breaches any other provision of this Agreement, the Authority shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of such breach. The Local Government's failure to cure the breach within 60 days from receipt of notice of such breach shall constitute an event of default under this Agreement.

(b) Upon an event of default, the Authority may declare all unpaid principal and interest to be immediately due and payable as well as pursue all available legal and equitable remedies. The Local Government shall be responsible for all costs that the Authority incurs in enforcing the provisions of this Agreement after an event of default, including, but not limited to, reasonable attorneys' fees.

9. CONDITIONS PRECEDENT. This Agreement is further conditioned on the receipt of the following documents, in form and substance acceptable to the Authority, if applicable, on or before the date of the first disbursement of the Project Loan; each document is to be dated or certified, as the case may be, on or before the date of the first disbursement of the Project Loan:

(a) A general certificate of the Local Government certifying the resolution or ordinance authorizing the Local Government to enter into this Agreement, the resolution or ordinance authorizing the rate and fee structure for the users of the system, and other matters;

(b) An opinion of the attorney or special counsel to the Local Government to the effect that:

(1) The Local Government has been duly created and is validly existing and has full power and authority (under its charter and by-laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of this Agreement;

(2) This Agreement is duly executed and constitutes a valid and binding contract of the Local Government, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the enforcement of creditors rights generally;

(3) This Agreement is not in conflict in any material way with any contracts, resolutions or ordinances of the Local Government; and

(4) There is no litigation materially adversely affecting this Agreement or the financial condition of the Local Government;

(c) An opinion of a licensed engineer or certified public accountant as to the sufficiency of the rates, fees and charges and any other fees and charges to meet costs of operation and maintenance, including depreciation and all debt service of the Local Government, as set forth in Paragraph 7(l);~~k~~) above;

(d) An opinion of a licensed engineer as to the reasonableness of the project costs and as to the estimated completion date of the Project; and

(e) A representation of the Local Government as to loans and State-Shared Taxes.

~~10.~~ 10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Agreement. The Local Government acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees, including but not limited to, the Department, the

Authority, and the employees thereof, arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. Title 9, Chapter 8.

11. SEVERABILITY. In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, the invalidity thereof shall in no way affect any of the other covenants, conditions or provisions hereof.

12. NOTICES. Any notice shall be delivered to the parties at the addresses below (or such other addresses as the parties shall specify to each other in writing):

To Department: Tennessee Department of Environment and Conservation
312 Rosa L. Parks Ave, 12th Floor
Nashville, TN 37243
ATTN: State Revolving Fund Loan Program

To Authority: Tennessee Local Development Authority
Suite 1600, James K. Polk Building
Nashville, TN 37243-0273
ATTN: Assistant Secretary

To Local Government:

12. SECTION HEADINGS. Section headings are provided for convenience of reference only and shall not be considered in construing the intent of the parties to this Agreement.

13. EFFECTIVE DATE. The effective date of this Agreement shall be the date on which the Authority approves this Agreement as indicated below.

IN WITNESS WHEREOF, the parties to this Agreement have caused the Agreement to be executed by their respective duly authorized representatives.

LOCAL GOVERNMENT

NAME _____
(City/Town/County)

BY: _____
(Signature)

DATE: _____

**TENNESSEE LOCAL DEVELOPMENT
AUTHORITY**

BY: _____

TITLE: _____

MEETING APPROVAL DATE: _____

INTEREST RATE: _____

APPROVED AS TO FUNDING:

**COMMISSIONER, DEPARTMENT OF
ENVIRONMENT AND CONSERVATION**

BY: _____

DATE: _____

**COMMISSIONER OF FINANCE AND
ADMINISTRATION**

BY: _____

DATE: _____

LIST OF CLOSING DOCUMENTS RELATED TO LOAN AGREEMENT

Copy of the Local Government's Application for Project Loan

Loan Conditions

General Certificate with copies of ordinances/resolution approving Loan
– Agreement and Rate Structure

Opinion as to Sufficiency of Rates, Fees and Charges and Cost and Completion

Representation as to Loans and State-Shared Taxes

Legal Opinion of Attorney or Special Counsel to Local Government

EXHIBIT A

FEDERAL LAWS AND EXECUTIVE ORDERS

ENVIRONMENTAL:

~~Archaeological and Historic Preservation Act~~Clean Air Act of 1974, PL 86-523, (Pub. L. 101-549, 42 U.S.C. § 7401, et seq.), as amended.

~~Clean Air Act, PL 84-159, as amended.~~

Endangered Species Act ~~PL~~(Pub. L. 93-205, 16 U.S.C. § 1531, et seq.), as amended.

Environmental Justice, Executive Order 12898, 59 Fed. Reg. 7629 (1994), as amended.

~~Executive Order 11988, Floodplain Management, Executive Order 11988 42 Fed Reg. 26951 (1977), as amended by E.O. Executive Order 12148, 44 FR 43239 (1979) (pertaining to Federal Emergency Management) and as further amended by Executive Order 13690, 80 FR 6425 (2015), as amended.~~

Protection of Wetlands, Executive Order 11990, 42 Fed Reg. 26961 (1977), as amended.

Farmland Protection Policy Act, ~~PL~~(Pub. L. 97-98, 7 U.S.C. § 4201, et seq.), as amended.

Fish and Wildlife Coordination Act, ~~PL~~(Pub. L. 85-624, 16 U.S.C. § 661 et seq.), as amended.

National Historic Preservation Act of 1966, ~~PL 89-665, (Pub. L. 113-287, 54 U.S.C. § 300101 et seq.), as amended.~~

~~Safe Drinking Water Act, PL 93-523, as amended.~~

Water Pollution Control Act of 1972, ~~PL 92-500, (Pub. L. 114-181, 33 U.S.C. § 1251 et seq.), as amended.~~

Safe Drinking Water Act (Title XIV of the Public Health Service Act, Pub. L. 93-523, 42 U.S.C. § 300f et seq.), as amended.

Wild and Scenic Rivers Act, ~~PL~~(Pub. L. 90-542, 28 U.S.C. § 1271, et seq.), as amended.

ECONOMIC AND MISCELLANEOUS AUTHORITIES:

Demonstration Cities and Metropolitan Development Act of 1966, ~~PL~~(Pub. L. 89-754 as, 42 U.S.C. § 3331, et seq.), as amended.
~~amended~~

Intergovernmental Review of Federal Programs, Executive Order 12372, 47 Fed. Reg. 30959 (1982), as amended.

Procurement Prohibitions under Section 306 of Clean Air Act, 42 U.S.C. § 7606, and Section 508 of Clean Air Water Act, 33 U.S.C. § 1368, including Executive Order 11738, 38 Fed. Reg. 25161(1973) (Administration of Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants and Loans), as amended.

Uniform Relocation and Real Property Acquisition Policies Act, PL (Pub. L. 91-646, 42 U.S.C § 4601, et seq.), as amended.

Debarment and Suspension, Executive Order 12549, 51 Fed. Reg. 6370 (1986), as amended.

Kickbacks from Public Works Employees Prohibited, 18 U.S.C. § 874.

Requirements for Public Work Contractors to Comply with U.S. Dept. of Labor Regulations (Pub. L. 103-322, Title XXXIII, § 330016(1)(K), 40 U.S.C. § 3145), as amended.

Contract Work Hours and Safety Standards Act (Pub. L. 111-350, 40 U.S.C. § 3701, et seq.), as amended.

SOCIAL POLICY AUTHORITIES:

Age Discrimination Act, PL 94-135 in Employment Act (Pub. L. 114-181, 29 U.S.C. § 621, et seq.), as amended.

Title VI of Civil Rights Act of 1964, PL (Pub. L. 88-352, 42 U.S.C. § 2000d, et seq.), as amended, and related anti-discrimination statutes applied to all of the operations of the SRF Program.

Section 13 of PL 92-500; Federal Water Pollution Control Act Amendments of 1972, PL 92-500 (the Clean Water Act).

Section 504 of the Rehabilitation Act of 1973, PL (Pub. L. 93-112 (including Executive Orders 11914 and 11250), 29 U.S.C. § 701), as amended, and Executive Order 12250 (45 Fed. Reg. 72995 (1980)).

Equal Employment Opportunity, Executive Order 11246- (30 Fed. Reg. 12319, 12935 (1965)), Executive Order 111375 (32 Fed. Reg. 14303 (1967)), and Executive Order 13672 (79 Fed. Reg. 42971 (2014)).

Women's Women's and Minority Business Administration Reauthorization and Amendment Act of 1988,

Enterprise Executive Orders 11625, (36 Fed. Reg. 19967 ((1971)), 12138, (44 Fed. Reg. 29637 (1979)), and 12432- (48 Fed. Reg. 32551 (1983)).

Section 129 of Small Business Administration Reauthorization and Amendment Act of 1988, PL (Pub. L. 100-590, 15 USC § 637), as amended.

**REVOLVING FUND LOAN AGREEMENT
FOR REVENUE ENTITIES
(i.e. UTILITY DISTRICTS AND WATER/WASTEWATER/ENERGY AUTHORITIES)**

This Agreement is among the Tennessee Department of Environment and Conservation (the "Department"), the Tennessee Local Development Authority (the "Authority") and _____ (the "Local Government"), which is a Tennessee governmental entity authorized to own, operate, and manage (water and/or wastewater facilities). The purpose of this Agreement is to provide for the financing of all or a portion of a _____ ~~(water, wastewater)~~ facility ~~(the "Project")~~ by the Local Government. The Local Government submitted an application for the financing dated _____, which is ~~made by reference a part of~~ hereby incorporated into this Agreement.

1. DEFINITIONS. Unless the context in this Agreement indicates another meaning, the following terms shall have the following meaning:

- (a) "Administrative fee" means the fee to be collected by the Authority for administration of the loan in accordance with Tenn. Code Ann. Sections 68-221-1004(a) and 68-221-1204(a), both as amended;
- (b) "Agreement" means this agreement providing financing for the Project from the Fund;
- ~~(c) "Clean Water Act" means the Water Pollution Control Act of 1972, PL 92-500, 33 USC Sections 1251 et seq. as amended, and rules and regulations promulgated thereunder;~~
- ~~(d)~~(c) "Facility" means either a wastewater facility or a water system;
- ~~(e)~~(d) "Fund" means:
 - (1) For wastewater projects, the wastewater revolving loan fund created by the Tennessee Wastewater Facilities Act of 1987, Tenn. Code Ann. Sections 68-221-1001 et seq., as amended, and rules ~~and regulations~~ promulgated thereunder, or
 - (2) For water projects, the drinking water revolving loan fund created by the Drinking Water Revolving Loan Fund Act of 1997, Tenn. Code Ann. Sections 68-221-1201 et seq., as amended, and rules ~~and regulations~~ promulgated thereunder;
- ~~(f)~~(e) "Local Government" means the governmental entity borrowing under this Agreement described in (1) Tenn. Code Ann. Section 68-221-1003(7)(A), as amended, if a wastewater facility and (2) Tenn. Code Ann. Section 68-221-1203(6), as amended, if a water system;
- ~~(g) "Program Loan" and "Loan Program Agreement" have the meanings established by TCA Section 4-31-102, as amended;~~

(f) “Obligations” means bonds, notes and any other evidence of indebtedness lawfully issued or assumed by the Local Government;

~~(h)~~(g) “Project” means the activities or tasks concerning a facility described in the Application~~application~~ submitted by the Local Government to be financed pursuant to this Agreement;

~~(i)~~(h) _____ “Project Cost” means the total amount of funds necessary to complete the Project;

~~(j)~~(i) _____ “Project Loan” means the moneys loaned from the Fund to finance the Project and, except for principal forgiven, required to be repaid pursuant to this Agreement;

~~(k)~~ “Safe Drinking Water Act” means the Safe Drinking Water Act, Title XVI of Public Health Service Act, 42 U.S.C. 300f et seq., as amended, and rules and regulations promulgated thereunder;

(j) “Revenues” means all fees, rents, tolls, rates, rentals, interest earnings, or other charges received or receivable by a Local Government from the water or wastewater system which is the Project, or of which the Project is or will be a component, including any revenues derived or to be derived by the Local Government from a lease, agreement or contract with any other local government, local government instrumentality, the state, or a state or federal agency for the use of or in connection with the system, or all other charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the Local Government from the operation of the system or arising from the system; and

~~(l)~~(k) _____ “State” shall mean means the state of Tennessee acting through the Department and the Authority, jointly or separately, as the context requires.

2. PROJECT

(a) Description. The description of the Project is ~~contained~~ as described in the Application~~application~~ submitted by the Local Government.

(b) Funding Sources. The Local Government estimates the Project Cost to be \$ _____ which is expected to be funded as follows:

(1) Project Loan (less principal \$
forgiveness,
if applicable)

(2) Principal Forgiveness (if applicable) \$

(3) Local Funds \$

(4) Other Funds \$

TOTAL

\$

3. LOAN

- (a) Loan and use of proceeds. The State shall lend to the Local Government from moneys available in the Fund an aggregate principal amount not to exceed \$ _____ to bear interest as described in (b) below. The Project Loan shall be used by the Local Government for completion of the Project described in the Application and in accordance with engineering plans and specifications and special conditions, approved and required by the Department and hereby incorporated into this Agreement. Interest on the Project Loan will begin to accrue upon the first disbursement of the Project Loan pursuant to Section 5 ~~hereof~~ of this Agreement.
- (b) Interest rate. The rate of interest for this Project Loan is that rate established by the Authority at the meeting at which this loan is approved, and stated on the payment schedule which is incorporated into and attached to this Agreement.
- (c) Administrative fee. The Authority shall collect a fee equal to 8 basis points of the total Project Loan, where one basis point is equal to one-hundredth of one percent (-0.01%).- This fee shall be payable in monthly installments equal to one-twelfth (1/12) of the annual fee amount as stated on the payment schedule.
- (d) Payment schedule. The Local Government expressly agrees to make all payments of principal and interest in accordance with the payment schedule, including the form of payment (currently electronic funds transfer), as it is from time to time revised by the State. A revision of the payment schedule shall not be deemed to be an amendment of this Agreement.

4. REPAYMENT OF PROJECT LOAN.

(a) Payments.

(1) The Local Government promises to repay to the order of the State the Project Loan plus interest, payable in installments on the 20th day of each month in accordance with the payment schedule established by the Authority and attached to this Agreement. The payment schedule will require payments of interest to begin after the first disbursement pursuant to Section 5 of this Agreement. The payment schedule will require repayments of principal to begin ~~either~~ the earlier of:

(A) Within ninety (90) days after the Project is completed; ~~or, if the Project consists solely of planning, replanning, or design work, after the Project is complete; or~~

(B) Within one hundred twenty (120) days after ninety percent (90%) of the Project Loan has been disbursed, ~~whichever event occurs earlier. However,~~

(2) Notwithstanding Section 4(a)(1), the Authority may agree, in the instance of a newly created water system, to defer the commencement of principal repayment for no more than one year after the Project is completed.

~~(a)~~(b) Reduction. The Project Loan, and the required payments made pursuant to the payment schedule, shall be reduced to reflect:

(1) Funding not ~~reflected~~listed in Section 2(b) which subsequently becomes available; or

(2) The amount actually disbursed by the State to the Local Government pursuant to the Agreement as the Project Loan.

If any of the conditions set out ~~above shall in~~ Section 4(b)(1) or (b)(2) occur, a new payment schedule reflecting such changes shall be submitted to the Local Government to be attached to this Agreement, superseding any previous schedules.

~~(b)(c)~~ ~~(e)~~ Prepayment. The Local Government, at its option, may prepay all or any portion of the Project Loan.

(d) Principal Forgiven. A portion of the original principal of the Project Loan may be forgiven by the State. The principal forgiven shall be _____ per cent (%) of the original principal amount of the Project Loan, or if the full original amount of the Project Loan is not used, then _____ percent (%) of the amount of the Project Loan actually disbursed. Notwithstanding Section 3, no interest shall accrue on the amount of principal forgiven pursuant to this Section 4(d).

5. DISBURSEMENT OF PROJECT LOAN. Each request by the Local Government for disbursement of the Project Loan shall constitute a certification by the Local Government that all representations made in this Agreement remain true as of the date of the request and that no adverse developments affecting the financial condition of the Local Government or its ability to complete the Project or to repay the Project Loan plus interest have occurred since the date of this Agreement unless specifically disclosed in writing by the Local Government in the request for disbursement. Submitted requests for disbursement must be supported by proper invoices and other documentation required by and acceptable to the Department and the Authority.

After the Department has certified and the Authority has approved a request for disbursement, the Authority will disburse the Project Loan during the progress of the Project. Each disbursement shall be by electronic funds transfer or such other form of payment as specified in the payment schedule and shall be equal to that portion of the unpaid principal amount incurred to the date of the Local Government's request for disbursement. The amount of any principal forgiven shall be allocated on a pro-rata basis to each disbursement made.

No more than 90% of the Project Loan shall be paid to the Local Government prior to the time: 1) the construction of the Project has been completed; 2) the facilities constituting the Project are in the opinion of the Department in proper operation; and 3) the Project has been approved by the Department; ~~at that time~~. Following approval of the Project by the Department, the remaining 10% of the Project Loan may be paid to the Local Government. Provided, however, that if this Project Loan is for planning or replanning and design, payments may be made prior to the completion of

construction of the Project for the full amount of costs associated with the planning or replanning and design.

6. AMENDMENT.

(a) Increase in Project Loan. If the final Project Cost is greater than is estimated in Section 2(b), then the Project Loan may be increased by a subsequent agreement executed by the parties to this Agreement (the amount of such increase may be subject to a different interest rate) if the following conditions are fulfilled:

(1) Amounts in the Fund are authorized and available for such increase;

(2) The increased Project Loan otherwise meets the applicable statutory requirements and the ~~regulations~~rules adopted thereunder; and

(3) Such increase in this Project Loan does not result in any violation or breach of any contract, resolution, or ~~action~~ordinance of the Local Government.

(b) Other Amendments and Modifications. Any other amendment or modification of this Agreement must first be approved by the Authority and must be in writing executed by the parties to this Agreement.

7. REPRESENTATIONS AND COVENANTS OF LOCAL GOVERNMENT. The Local Government hereby represents, agrees, and covenants with the State as follows:

(a) To construct, operate and maintain the Project in accordance, and to comply, with all applicable federal and state statutes, rules, regulations, procedural guidelines, and grant conditions;

(b) To comply with the Project schedule, engineering plans and specifications, and any and all special conditions established and/or revised by the Department;

(c) To commence operation of the Project on its completion; and not to contract with others for the operation and management of or to discontinue operation or dispose of the Project without the prior written approval of the Department and the Authority;

(d) To provide for the Local Government's share of the cost of the Project;

(e) To comply with applicable federal requirements including the laws and executive orders listed on Exhibit A to this Agreement;

(f) To advise the Department before applying for federal or other state assistance for the Project;

(g) To establish and maintain adequate financial records for the Project in accordance with generally accepted government accounting principles; to cause to be made an annual audit acceptable to the Comptroller of the Treasury of the financial records and transactions covering

each fiscal year; and to furnish a copy of such audit to the Authority. In the event of the failure or refusal of the Local Government to have the annual audit prepared, then the Comptroller of the Treasury may appoint an accountant or direct the Department of Audit to prepare the audit at the expense of the Local Government;

- (h) To provide and maintain competent and adequate engineering supervision and inspection of the Project to insure that the construction conforms with the engineering plans and specifications approved Plans and Specifications by the Department;
- (i) To abide by and honor any further guarantees or ~~securities~~granting of security interests as may be required by the State which are not in conflict with state or federal law;
- (j) To do, file, or cause to be done or filed, any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created hereunder;
- (k) To establish and collect, and to increase, user fees and charges as needed to pay the monthly installments due under this Agreement, as well as the other costs of operation and maintenance including depreciation and debt service of the system of which the Project is a part; and
- (l) To establish and collect, and to increase user fees and charges sufficient to meet a 1.20X debt service coverage to net revenues. -Net revenues are gross earnings, fees and charges, less current expenses.- Current expenses are those incurred in the operation of the system, determined in accordance with generally accepted accounting principles ("GAAP"), including the reasonable and necessary costs of operating, maintaining, repairing and insuring the system, salaries, wages, cost of material and supplies, and insurance premiums, but shall specifically exclude depreciation and debt service payments.
- (m) No additional debt payable from Revenues will be issued or entered into unless:
 - (1) Prior approval is received from the Authority;
 - (2) The annual audit required by the terms of this Agreement for the most recent fiscal year has been delivered within six (6) months after the end of such fiscal year;
 - (3) The covenant in ~~Paragraph 7~~Section 7(1) above was met for the most recent fiscal year;
 - (4) The net revenues of the system for the next three fiscal years ending after the issuance of the additional debt, shall be sufficient to comply with the covenant in ~~Paragraph~~Section 7(1) above; and
 - (5) The Local Government shall have adopted a revised schedule of rates and fees and taken action to put such revisions in effect at or prior to the issuance of the additional debt; and
- ~~(n)~~(n) The Local Government is subject to the jurisdiction of the Water and Wastewater Financing Board ("WWFB") established in Tenn. Code Ann. Section 68-221-1008 or of the Utility Management Review Board ("UMRB") created in Tenn. Code Ann. Section 7-82-701 as

provided by law. If the Authority, in its sole discretion, determines that the Local Government's obligations under this Agreement have been or may be impaired, the Authority may refer the Local Government to the WWFB or UMRB (each a "Board") as appropriate. In the event of default under this Agreement, the Authority shall refer the Local Government to the Board having jurisdiction over the entity. In such event, the Local Government covenants, to the extent permitted by law, to request advisory technical assistance from the Board ~~pursuant to TCA Section 7-82-702(6)~~ and to request that the Board propose any and all management, fiscal and/or rate changes necessary to enable the Local Government to fulfill its obligations to the Authority under this Agreement. -The Local Government agrees to supply the Board with any information that the Board may request in connection with its analysis of the Local Government's system. The Local Government agrees that it will implement any and all technical, management, fiscal and/or rate changes recommended by the Board and determined by the Authority to be required for the Local Government to fulfill its obligations to the Authority under this Agreement.

8. SECURITY AND DEFAULT.

(a) ~~As security for payments due under this Project Loan and interest Agreement,~~ the Local Government pledges user fees and charges, and covenants and agrees that it shall increase such fees and charges as needed to pay the monthly installments due under this Agreement, as well as the other costs of operation and maintenance of the system, including depreciation. The Local Government further pledges such other additional available sources of Revenues as are necessary to meet the obligations of the Local Government under this Agreement.

Prior to the first disbursement of funds under this Agreement, the Local Government will deposit with the Authority an amount of funds equal to the maximum annual debt service (the "security deposit"). The amount of the security deposit will be adjusted to reflect adjustments in the payment schedule. The Authority will credit the Local Government with interest earnings on the security deposit on at least an annual basis pursuant to policy of the Authority.

As further security for payments due under this Agreement, the Local Government pledges and assigns, subject to the provisions herein, any funds due to the Local Government from the State.

If the Local Government fails either to fully fund the security deposit as provided above or to remit the monthly payments as established in the payment schedule, the Authority shall deliver by certified mail written notice of such failure to the Local Government within 7 days of such failure; and the Authority shall suspend making disbursements as provided in Section 5 until such delinquency is cured. ~~In the event~~ If the Local Government shall fail ~~fails~~ to cure payment delinquency within 15 days of the receipt of such notice, such failure shall constitute an event of default under this Agreement, and in addition, the Authority shall apply from the ~~funds deposited as provided above~~ security deposit only such sum ~~the funds~~ necessary to liquidate the amount of the delinquency of the Local Government to the Authority as of that date. -If the funds deposited ~~as provided above~~ in the security deposit are not sufficient to cure the delinquency, the Authority shall notify the Commissioner of Finance and Administration, and the Commissioner shall withhold such amount from any funds otherwise due to the Local Government from the State and pay such amount to the Authority for deposit into the Fund. - The Local Government acknowledges that it has no claim on such funds withheld or paid over as permitted under this Agreement. The Local Government shall

replenish the security deposit within 60 days from any withdrawal of funds from that account by the Authority to liquidate the delinquency as provided above. Failure to replenish the security deposit within 60 days shall constitute an event of default under this Agreement.

~~Failure by~~ If the Local Government ~~to pay to~~ breaches any other provision of the Agreement, the Authority ~~the monthly payments as set forth herein,~~ shall deliver by certified mail a written notice of such breach to the Local Government within 30 days of the Authority learning of the breach. The Local Government's failure to ~~pay to the Authority the initial Security Deposit as set forth above, to replenish the Security Deposit within 60 days from any withdrawal of funds from that account as provided above, or to cure any breach of any covenant or representation of the Local Government contained herein~~ within 60 days from receipt of notice of such breach shall constitute an event of default ~~under this Agreement.~~

(b) Upon an event of default, the Authority may declare all unpaid principal and interest to be immediately due and payable as well as pursue all available legal and equitable remedies. -The Local Government shall be responsible for all costs that the Authority incurs in enforcing the provisions of this Agreement after an event of default, including but not limited to reasonable attorneys' fees.

9. CONDITIONS PRECEDENT. This Agreement is further conditioned on the receipt of the following documents, if applicable on or before the date of the first disbursement of the Project Loan; each document is to be dated or certified, as the case may be, on or before the date of the first disbursement of the Project Loan.

(a) A general certificate of the Local Government certifying the resolution authorizing the Local Government to enter into this Agreement, the resolution authorizing the rate and fee structure for the users of the system, and other matters;

(b) An opinion of the attorney or special counsel to the Local Government to the effect that:

(1) The Local Government has been duly created and is validly existing and has full power and authority (under its charter and by-laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of this Agreement;

(2) This Agreement is duly executed and constitutes a valid and binding contract of the Local Government, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the enforcement of creditors rights generally;

(3) This Agreement is not in conflict in any material way with any contracts ~~or~~, resolutions, or ordinances of the Local Government; and

(4) There is no litigation materially adversely affecting this Agreement or the financial condition of the Local Government;

- (c) An opinion of a licensed engineer or certified public accountant as to the sufficiency of the rates, fees and charges to meet the representations and covenants of the Local Government in Paragraphs 7(k) and (l) above;
- (d) An opinion of a licensed engineer as to the reasonableness of the project costs and as to the estimated completion date of the Project; and
- (e) If the Project is for the expansion of a wastewater facility rather than remedial (correction of public health problem), the Local Government shall submit written evidence of consent to the expansion by the relevant governing bodies.

10. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Agreement. The Local Government acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees, including but not limited to, the Department, the Authority, and the employees thereof, arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. Title 9, Chapter 8.

11. SEVERABILITY. In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, the invalidity thereof shall in no way affect any of the other covenants, conditions or provisions hereof.

~~11~~12. NOTICES. Any notice shall be delivered to the parties at the addresses below (or such other addresses as the parties shall specify to each other in writing):

To Department: Tennessee Department of Environment and Conservation
312 Rosa L. Parks Ave, 12th Floor
Nashville, TN 37243
ATTN: State Revolving Fund Loan Program

To Authority: Tennessee Local Development Authority
Suite 1600, James K. Polk Building
Nashville, TN 37243-0273
ATTN: Assistant Secretary

To Local Government: _____

12. SECTION HEADINGS. Section headings are provided for convenience of reference only and shall not be considered in construing the intent of the parties to this Agreement.

13. EFFECTIVE DATE. The effective date of this Agreement shall be the date on which the Authority approves this Agreement as indicated below.

IN WITNESS WHEREOF, the parties to this Agreement have caused the Agreement to be executed by their respective duly authorized representatives.

LOCAL GOVERNMENT

NAME: _____
(Utility District)

BY: _____
(Signature)

TITLE: _____

DATE: _____

**TENNESSEE LOCAL DEVELOPMENT
AUTHORITY**

BY: _____

TITLE: _____

MEETING APPROVAL DATE: _____

INTEREST RATE: _____

**COMMISSIONER, TENNESSEE
DEPARTMENT OF ENVIRONMENT
AND CONSERVATION**

BY: _____

DATE: _____

APPROVED AS TO FUNDING

**COMMISSIONER OF FINANCE AND
ADMINISTRATION**

DATE: _____

LIST OF CLOSING DOCUMENTS RELATED TO LOAN AGREEMENT

Copy of the Local Government's Application for Project Loan

Loan Conditions

General Certificate with copies of ordinances/resolution approving Loan Agreement and Rate Structure
~~—Agreement and Rate Structure~~

Opinion as to Sufficiency of Rates, Fees and Charges and Cost and Completion

~~Representation as to Loans and State Shared Taxes~~

Legal Opinion of Attorney or Special Counsel to Local Government

Written Evidence of Consent to an Expansion by the Relevant Governing Bodies (if applicable)

EXHIBIT A

FEDERAL LAWS AND EXECUTIVE ORDERS

ENVIRONMENTAL:

~~Archaeological and Historic Preservation Act~~Clean Air Act of 1974, PL 86-523, (Pub. L. 101-549, 42 U.S.C. § 7401, et seq.), as amended.

~~Clean Air Act, PL 84-159, as amended.~~

Endangered Species Act ~~PL~~(Pub. L. 93-205, 16 U.S.C. § 1531, et seq.), as amended.

Environmental Justice, Executive Order 12898, 59 Fed. Reg. 7629 (1994), as amended.

~~Executive Order 11988, Floodplain Management, Executive Order 11988 42 Fed Reg. 26951 (1977), as amended by E.O. Executive Order 12148, 44 FR 43239 (1979) (pertaining to Federal Emergency Management) and as further amended by Executive Order 13690, 80 FR 6425 (2015), as amended.~~

Protection of Wetlands, Executive Order 11990-, 42 Fed Reg. 26961 (1977), as amended.

Farmland Protection Policy Act, ~~PL~~(Pub. L. 97-98, 7 U.S.C. § 4201, et seq.), as amended.-

Fish and Wildlife Coordination Act, ~~PL~~(Pub. L. 85-624, 16 U.S.C. § 661 et seq.), as amended.

National Historic Preservation Act of 1966, ~~PL 89-665, (Pub. L. 113-287, 54 U.S.C. § 300101 et seq.), as amended.~~

~~Safe Drinking Water Act, PL 93-523, as amended.~~

Water Pollution Control Act of 1972, ~~PL 92-500, (Pub. L. 114-181, 33 U.S.C. § 1251 et seq.), as amended.~~

Safe Drinking Water Act (Title XIV of the Public Health Service Act, Pub. L. 93-523, 42 U.S.C. § 300f et seq.), as amended.

Wild and Scenic Rivers Act, ~~PL~~(Pub. L. 90-542, 28 U.S.C. § 1271, et seq.), as amended.

ECONOMIC AND MISCELLANEOUS AUTHORITIES:

Demonstration Cities and Metropolitan Development Act of 1966, ~~PL~~(Pub. L. 89-754, 42 U.S.C. § 3331, et seq.), as amended.

Intergovernmental Review of Federal Programs, Executive Order 12372, 47 Fed. Reg. 30959 (1982), as amended.

Procurement Prohibitions under Section 306 of Clean Air Act, 42 U.S.C. § 7606, and Section 508 of Clean ~~Air~~Water Act, 33 U.S.C. § 1368, including Executive Order 11738, 38 Fed. Reg. 25161(1973) (Administration of Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants and Loans), as amended.

Uniform Relocation and Real Property Acquisition Policies Act, ~~PL~~ (Pub. L. 91-646, 42 U.S.C § 4601, et seq.), as amended.

Debarment and Suspension, Executive Order 12549-

, 51 Fed. Reg. 6370 (1986), as amended.

Kickbacks from Public Works Employees Prohibited, 18 U.S.C. § 874.

Requirements for Public Work Contractors to Comply with U.S. Dept. of Labor Regulations (Pub. L. 103-322, Title XXXIII, § 330016(1)(K), 40 U.S.C. § 3145), as amended.

Contract Work Hours and Safety Standards Act (Pub. L. 111-350, 40 U.S.C. § 3701, et seq.), as amended.

SOCIAL POLICY AUTHORITIES:

Age Discrimination Act, ~~PL 94-135~~ in Employment Act (Pub. L. 114-181, 29 U.S.C. § 621, et seq.), as amended.

Title VI of Civil Rights Act of 1964, ~~PL~~ (Pub. L. 88-352, 42 U.S.C. § 2000d, et seq.), as amended, and related anti-discrimination statues ~~applied to all of the operations of the SRF Program.~~

Section 13 of PL 92-500; Federal Water Pollution Control Act Amendments of 1972, PL 92-500 (the Clean Water Act).

Section 504 of the Rehabilitation Act of 1973, ~~PL~~ (Pub. L. 93-112 (including Executive Orders 11914 and 11250), 29 U.S.C. § 701), as amended, and Executive Order 12250 (45 Fed. Reg. 72995 (1980)).

Equal Employment Opportunity, Executive Order 11246- (30 Fed. Reg. 12319, 12935 (1965)), Executive Order 11375 (32 Fed. Reg. 14303 (1967)), and Executive Order 13672 (79 Fed. Reg. 42971 (2014)).

Women's and Minority Business Administration Reauthorization and Amendment Act of 1988,

Enterprise Executive Orders 11625, (36 Fed. Reg. 19967 ((1971)), 12138, (44 Fed. Reg. 29637 (1979)), and 12432, (48 Fed. Reg. 32551 (1983)).

Section 129 of Small Business Administration Reauthorization and Amendment Act of 1988, ~~PL~~ (Pub. L. 100-590, 15 USC § 637), as amended.

**Tennessee Local Development Authority
State Revolving Fund
Policy & Guidance for Borrowers**

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Tennessee Local Development Authority

State Revolving Fund

Policy & Guidance for Borrowers

Introduction

The purpose of the Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs (together, the “SRF program”) is to provide financial assistance to address federal and state health, safety, and environmental requirements for clean water and safe drinking water. Through the SRF program, local governments and water systems are eligible to apply for below market rate loans to finance the infrastructure to meet these requirements. The purpose of this Tennessee Local Development Authority State Revolving Fund Policy & Guidance for Borrowers (“Policy and Guidance”) is to provide guidance to SRF program borrowers.

Over the years, the Tennessee Local Development Authority (the “TLDA”) has established policies and other guidance to assist program borrowers. The TLDA has conducted a review of these documents with regards to their clarity and efficacy for SRF program borrowers, alignment with SRF program goals, and compliance with SRF program requirements. This resulting Policy and Guidance supersedes any policy or guidance previously approved by the TLDA, including, but not limited to:

- Incremental Funding Policy approved on August 26, 2008.
- Policy on Approval of Refundings Proposed by Utility Districts/Water and Wastewater Authorities approved on October 15, 2010.
- Policy on Subordination approved on January 13, 2012.
- Intent on Parity Status document approved on June 8, 2012.
- Loan Modification Policy approved on October 24, 2013.

Please note that the Tennessee General Assembly passed legislation in 2015 allowing privately owned for-profit community public water systems (“Private Systems”) access to the Drinking Water SRF loan program. At the time of the approval of this Policy and Guidance, no loans have been made to Private Systems nor have any applications been received. As such, the policies and guidance included in this document are not at this time applicable to private systems. Please refer to the section titled Privately Owned For-Profit Community Public Water Systems for more information on the enacted legislation.

Definitions

For purposes of this Policy and Guidance, terms defined in Tenn. Code Ann. Title 68, Chapter 221, Parts 10 and 12, shall have the same meaning as defined in those parts unless the context otherwise requires. Any subsequent amendment to definitions in those parts or statutes cited in the definitions below is hereby incorporated by this Policy and Guidance.

"Borrower" means any municipality, system, or utility district for which a SRF program loan has received final approval by the TLDA in accordance with Tenn. Code Ann. § 68-221-1005(c) or Tenn. Code Ann. § 68-221-1205(g) unless such loan has been paid in full.

"Municipality" means a county, incorporated town or city, or metropolitan government.

"State-shared taxes" has the same meaning as defined in Tenn. Code Ann. § 4-31-102.

"System" means:

- (1) A water/wastewater authority or an energy authority; or
- (2) Any instrumentality of government created by one or both of the entities described in this definition; a municipality; or by an act of the General Assembly, but does not mean a utility district.

"Utility district" or "UD" means a utility district formed pursuant to the Utility District Law, compiled in Title 7, Chapter 82.

"Privately owned for-profit community public water system" or "Private System" means a system eligible to apply for Drinking Water SRF program loans pursuant to Code of Federal Regulations ("CFR") Part 35 and Tenn. Code Ann. § 68-221-1203(6).

"Tennessee Local Development Authority" or "TLDA" means the entity created by Tenn. Code Ann. Title 4, Chapter 31.

"Tennessee Department of Environment and Conservation" or "TDEC" means the department created by Tenn. Code Ann. 4-3-501.

Issuance of Additional Debt

Purpose

The SRF program provides Borrowers with low cost loans in order to fund water and wastewater projects; however, the program may not be able to meet all of the financing needs of all Borrowers or potential borrowers. Rapidly growing local governments, systems, and UD's may also need to issue additional debt in order to address their needs. By blending a below market interest rate SRF program loan(s) with the higher rate debt sold in the public market, these Borrowers may be able to incur lower overall costs and as a result, provide service to their customers at lower average user fees than would be available if such Borrowers relied solely upon directly issued public debt. While recognizing that there may be a need for additional borrowing outside of the SRF program, the TLDA has a responsibility to ensure the integrity of the program, which relies on the repayment of monies borrowed to fund future loans. As such, the TLDA must carefully consider any request from a Borrower which might impair the security for a Borrower's SRF program loan(s), including requests to modify lien position with respect to new debt.

This section provides guidance to Borrowers that wish to issue additional debt, clarifies the TLDA's position with respect to requests by Borrowers to modify the TLDA's lien position on SRF loans, and outlines factors to be analyzed by the TLDA when considering requests to modify such lien position.

Utility Districts and Systems

Requests from UD's and Systems to Issue Additional Revenue Debt

Since UD's and Systems do not have taxing authority, they cannot issue general obligation debt. Therefore, any additional debt issued by a UD or System that is a Borrower, would be payable from the same revenues that are pledged to repay the Borrower's SRF program loan ("SRF Loan"), and must first meet all representations and covenants in the Borrower's SRF loan agreement. All requests to issue such additional revenue debt must be approved by the TLDA prior to the issuance of such debt. In order to allow adequate time for such consideration, all requests should be submitted to the TLDA in writing at least 45 days prior to the anticipated issuance date.

Any request for which the Borrower seeks either parity or a senior lien position for the new revenue debt must specifically request such position in writing, and the TLDA must approve any modification of the SRF program's lien position prior to the issuance of any new debt. (See section titled Lien Position.)

If the additional revenue debt is being issued solely to refund previously outstanding debt, approval may be granted by the Vice-Chairman of the TLDA, as outlined below in the section titled Approval for the Issuance of Refunding Debt.

Borrowers should always consult their bond or disclosure counsel in order to obtain advice on the appropriate disclosure to be made in offering documents for any new debt concerning the lien held by the SRF program.

Approval for the Issuance of Refunding Debt

Due to short time frames required to take advantage of market conditions to achieve savings through the issuance of refunding debt, the Vice-Chairman of the TLDA is authorized to approve refunding debt proposed to be issued by a Borrower when:

- The refunding does not extend the life of the debt;
- The refunding debt is structured to generate debt service savings of at least 3 percent net present value savings of the refunded debt;
- Documentation is provided to the Vice-Chairman, in the form of a projected savings report certified by a financial advisor or underwriter, demonstrating such savings can be achieved;
- The Borrower is not requesting parity or senior lien position for the refunding debt;
- Staff has analyzed the transaction and has concluded that any prerequisites for TLDA approval of the issuance of additional debt have been met; and,

The Borrower agrees to provide a final savings report to the Vice-Chairman, which shows the actual savings achieved by the refunding. All requests should be submitted to the TLDA in writing at the same time that the plan of finance for the issuance of refunding debt is submitted to the Director of the Office of State and Local Finance pursuant to Tenn. Code Ann. § 7-82-501. The Vice-Chairman will report any such approvals at the next meeting of the TLDA. At that time (or as soon as it is available), the Vice-Chairman will provide the final savings report to all members of the TLDA for review.

The Vice-Chairman will report any such approvals at the next meeting of the TLDA. At that time (or as soon as it is available), the Vice-Chairman will provide the final savings report to all members of the TLDA for review.

Security and Representations and Covenants Required for Consideration of a UD or System's Request to Issue Additional Revenue Debt

SRF loans to Utility Districts and Systems are secured by user fees and other revenues collected by the Borrowers. Utility Districts and Systems do not have State-shared or ad valorem taxes to pledge as security for SRF loans. In order to secure these loans, alternative procedures and covenants relating to these entities have been established. By statute, a UD or System Borrower pledges and assigns any funds due to it from the State. However, in most cases, there are no state funds due to a UD or System to intercept in the event of a delinquency.

The requirements summarized below are included in the representations and covenants made in the SRF loan agreements for Utility Districts and Systems:

- To do, file or cause to be done or filed any action or statement required to perfect or continue the lien(s) or pledge(s) granted or created under the loan agreement;

- To establish and collect, and to increase user fees and charges sufficient to meet a 1.20x debt service coverage to net revenues. Net revenues are gross earnings, fees and charges, less current expenses. Current expenses are those incurred in the operation of the system, determined in accordance with generally accepted accounting principles ("GAAP"), including the reasonable and necessary costs of operating, maintaining, repairing and insuring the system, salaries, wages, cost of material and supplies, and insurance premiums, but specifically excluding depreciation and debt service payments; and
- No additional debt payable from the revenues of the system will be issued or entered into unless:
 - (1) Prior approval is received from the TLDA;
 - (2) The annual audit required by the terms of the loan agreement for the most recent fiscal year has been delivered within six months after the end of such fiscal year;
 - (3) The covenant requiring 1.20x debt service coverage to net revenues was met for the most recent fiscal year;
 - (4) The net revenues of the system for the next three fiscal years ending after the issuance of the additional debt shall be sufficient to comply with the covenant to establish and collect user fees and charges sufficient to meet a 1.20x debt service coverage to net revenues; and
 - (5) The UD or System has adopted a revised schedule of rates and fees and taken action to put such revisions in effect at or prior to the issuance of the additional debt.

As additional security for a SRF Loan, prior to the first disbursement of funds under a SRF loan agreement, a Utility District or System must deposit with the TLDA an amount of cash equal to the maximum annual debt service on such SRF Loan (or a portion of such amount, to be paid in up to four equal installments in accordance with the section titled Incremental Funding of Security Deposit). This security deposit must be funded from cash available to a UD or System and no portion of a security deposit may be funded with proceeds of a SRF Loan.

Municipalities

Requests from Municipalities to Issue General Obligation Debt

Municipal Borrowers do not need to seek approval from or provide notification to the TLDA to issue general obligation debt if the new general obligation debt will be considered to have a subordinate lien position to the SRF loan(s). However, if a Borrower intends to seek parity or senior lien position for its new general obligation debt, the Borrower must request in writing the approval of the TLDA. Such request should be submitted at least 45 days in advance (or as soon as possible) of proposed issuance of additional debt. The TLDA must approve any modification of the SRF program's lien position prior to the issuance of any general obligation debt (new money or refunding). Borrowers should always consult bond or disclosure counsel in order to obtain

advice on the appropriate disclosure to be made in offering documents for general obligation bonds or notes concerning the lien held by the SRF program.

Requests from Municipalities to Issue Revenue Debt

A Municipal Borrower that intends to issue revenue debt, which will be secured by a source of revenue other than the revenues of its water/wastewater system, should notify the TLDA in writing prior to the issuance of such debt. The written communication should be made at least 45 days in advance (or as soon as possible), but no approval is required from the TLDA. If the revenue debt will be secured by the revenues of the water/wastewater system, but the Borrower is not asking for parity or senior lien position, the Borrower should notify the TLDA in writing prior to the issuance of such debt and should include a statement that the Borrower understands that such debt will be subordinate to the SRF loan. The written communication should be made at least 45 days in advance (or as soon as possible), but no approval is required from the TLDA. If a Borrower seeks parity or senior lien position for the revenue debt (new money or refunding), the Borrower must request in writing the approval of the TLDA. Such request should be submitted at least 45 days in advance of proposed issuance of additional debt or as soon as possible. The TLDA must approve any modification of the SRF program's lien position prior to the issuance of any revenue debt (new money or refunding). (See section titled Lien Position.)

Borrowers should always consult bond or disclosure counsel in order to obtain advice on the appropriate disclosure to be made in offering documents for any revenue debt concerning the lien held by the SRF program.

Encumbrance of State-Shared Taxes

If the additional debt involves a pledge of State-shared taxes, the Borrower must request in writing approval from the TLDA to encumber the Borrower's State-shared taxes, and the TLDA must approve any encumbrance of the Borrower's State-shared taxes prior to the issuance of any such new debt. Such request should be submitted at least 45 days in advance of the proposed issuance date of such debt or as soon as possible.

Lien Position

Requests from UD's, Systems, or Municipalities to Modify Lien Position

Generally, lien position, or lien priority, is determined by the date of the debt. The date of any SRF Loan shall be the date that the TLDA approves such loan request (as evidenced on the SRF loan agreement). Therefore, in the absence of an approval by the TLDA to modify its lien position, any debt issued by a Borrower after the approval of a SRF Loan would be subordinate to the SRF Loan. However, if a Borrower requests a modification of the TLDA's lien position to new debt, the TLDA may consider a modification upon demonstration from a Borrower of good cause, sufficient resources to repay the SRF Loan(s), and ability to satisfy any other such requirements as set forth by the TLDA at the time of the request. Because a request for subordination of SRF debt to a Borrower's debt may pose more risk to the SRF loan program than a request for parity, such a request warrants very careful consideration by the TLDA. The TLDA may approve a request for subordination under limited circumstances if a Borrower demonstrates a reasonable need, meets all requirements set forth by the TLDA, and the TLDA deems such request to be in the best interest of the Borrower and the users of the UD, System, or Municipal system.

All requests to modify a SRF program lien position must be approved by the TLDA prior to the issuance of any such debt (new money or refunding). In order to allow adequate time for such consideration, all requests should be submitted in writing to the TLDA at least 45 days prior (or as soon as possible) to the anticipated issuance date of such new debt.

Factors to be Considered for a Request to Modify Lien Position

The TLDA shall analyze several factors, as appropriate, when considering requests to issue additional debt payable, which would modify the SRF program's lien position. These factors shall include but are not limited to:

- Compliance of the Borrower with its SRF loan agreement(s) and covenants and representations set forth in the loan agreement;
- Amount of authorized and outstanding SRF program debt of the Borrower;
- Borrower's history of timely repayments of SRF loans;
- Borrower's timely filing of financial statements with the Division of Local Government Audit, Tennessee Comptroller of the Treasury;
- Purpose and amount of proposed debt issuance;
- Borrower's credit rating (if applicable);
- Current and pro-forma (projected) debt service coverage;
- Amount of unobligated state-shared taxes (if applicable);
- The system's reliance on revenues generated from its largest user(s) as a percentage of total system revenues;
- The lien position of existing SRF debt remains the same or is improved; and
- Impact on the health, safety, and well-being of the people of the state of Tennessee.

Consent to Modify Lien Position

Any consent by the TLDA to modify its SRF program lien position applies only to revenues pledged to serve the SRF loan, and/or ad valorem taxes (if applicable). Consent to modify the SRF lien position does not affect any pledge of State-shared taxes or any rights to security deposits held by the TLDA (if applicable).

Consent of the TLDA to modify the SRF program's lien position is subject to the condition that the documentation authorizing the new debt: 1) clearly states that debtholders have no rights to any security deposits required by, and securing, the SRF loan agreement(s) and 2) does not provide debtholders acceleration rights that are superior to, or more generous than, those provided under the SRF loan agreement(s). Neither the TLDA nor the TDEC shall have any rights to any debt service reserve fund established in favor of the new debt.

The Borrower will be responsible for ensuring completeness and correctness of all documents. The TLDA makes no representation that the issuance of additional debt by the Borrower is in compliance with all applicable laws, or that such issuance is in the best interest of the Borrower. The TLDA is not a municipal financial advisor, and offers no financial advice to Borrowers concerning such requests.

Report on Debt Obligation

A Report on Debt Obligation (the “Report”) must be prepared for all debt obligations issued or entered into by any public entity and filed with its governing body with a copy sent to the Office of State and Local Finance/Comptroller of the Treasury for the State of Tennessee. The purpose for the Report is to provide clear and concise information to members of the governing or legislative body that authorized and is responsible for the debt issued. More information on this Report is included as a resource for local governments on the Comptroller’s Office of State and Local Finance website.

Disclosure

The Electronic Municipal Market Access (EMMA) website was created by the Municipal Rulemaking Securities Board (MSRB) to provide municipal market information, such as official statements, continuing disclosure documents, advanced refunding documents, and trade data for all municipal securities in the United States. All local government issuers are required to perform continuing disclosure undertakings related to Securities and Exchange Commission Rule 15c2-12 via EMMA.

A local government may need to disclose information concerning its SRF program loan(s) on the MSRB’s EMMA website. The local government should consult with counsel to determine what the appropriate disclosures should be. More information about EMMA can be found on the MSRB’s website.

Forgiveness of Principal

Purpose

Beginning with a capitalization grant received as a part of the American Recovery and Reinvestment Act of 2009, the U.S. Environmental Protection Agency (“EPA”) has required, as a condition of acceptance of the annual EPA Capitalization Grant that the SRF program set aside a portion of the funds received from such grant in order to subsidize the loans to eligible Borrowers. Pursuant to Tenn. Code Ann. § 68-221-1005(*I*)(1), “[t]he department and the authority may use any federal funds allocated to the state to make loans and to subsidize loans made through the program authorized by this part, through such mechanisms as forgiveness of principal and negative interest rates.” The Intended Use Plan (“IUP”) prepared by TDEC is a required part of TDEC’s annual application for the EPA Capitalization Grants. This document outlines the percent of principal forgiveness that will be given for each loan made from that EPA Capitalization Grant.

No principal shall be forgiven except as required by the IUP and specified in the SRF loan agreements. Furthermore, privately owned for-profit community public water systems eligible for SRF loans pursuant to 40 CFR Part 35 shall not be considered for loans with principal forgiveness pursuant to Tenn. Code Ann. § 68-221-1206(f)(11)(A).

Terms and Conditions

SRF loan agreements that provide for principal forgiveness shall specify the amount of principal to be forgiven. Funds disbursed to a Borrower that has been awarded principal forgiveness, shall be disbursed pro rata as principal forgiveness and loan. If a Borrower submits requests for reimbursement that total an amount less than the total SRF program funding that the Borrower was awarded, then pro rata shares of principal forgiveness and loan shall be deemed to have been disbursed. For example:

Project A

Total SRF Funding Awarded:	\$1,000,000
Total Principal Forgiveness Awarded:	\$ 150,000 (15%)
Total Loan Awarded:	\$ 850,000 (85%)
Reimbursement Request #1:	\$ 350,000
Principal Forgiveness:	\$ 52,500 (15%)
Loan Amount to be Repaid:	\$ 297,500 (85%)
Reimbursement Request #2:	\$ 300,000
Principal Forgiveness:	\$ 45,000 (15%)
Loan Amount to be Repaid:	\$ 255,000 (85%)
Reimbursement Request #3 (Final):	\$ 300,000
Principal Forgiveness:	\$ 45,000 (15%)
Loan Amount to be Repaid:	\$ 255,000 (85%)
Total Disbursements to Borrower:	\$ 950,000
Total Principal Forgiveness:	\$ 142,500 (15%)
Total Loan Amount to be Repaid:	\$ 807,500 (85%)

Incremental Funding of Security Deposit for Utility Districts and Systems

Purpose

Pursuant to Section 8 of the loan agreement for Utility Districts and Systems, a security deposit is required in an amount of funds equal to the maximum annual debt service.

Section 8 of the loan agreement states in part:

Prior to the first disbursement of funds under this Agreement, the Local Government will deposit with the Authority an amount of funds equal to the maximum annual debt service (the "security deposit"). The amount of the security deposit will be adjusted to reflect adjustments in the payment schedule.

The amount of the security deposit is calculated based on the total approved loan amount. It is important to note that the SRF program operates on a reimbursement basis, but will not reimburse a Borrower with loan proceeds to fund the security deposit. A Borrower must fund the required deposit from its own resources prior to any disbursement of loan proceeds. The TLDA recognizes that although a Borrower may have increased user rates and fees to generate necessary cash flow needed for a project, sufficient cash flow might not be available at the beginning of a project to fully fund the security deposit up front, since the construction period during which loan proceeds are disbursed could take one to three years. Consequently, the TLDA authorizes its Assistant Secretary, upon the concurrence of TDEC, to approve Borrower requests for incremental funding of security deposits.

Upon approval of incremental funding by the Assistant Secretary, a Borrower would be allowed to deposit with the TLDA its security deposit in up to four equal installments (see Exhibit A). The Assistant Secretary shall use his/her discretion to recommend the number of installments that will be allowed, based upon the amount of the required security deposit. Upon the concurrence of TDEC with such recommendation, the Assistant Secretary will notify the Borrower of the required incremental amount to be deposited. Then a pro rata share of project reimbursement requests may be disbursed upon the deposit of the first increment. Project reimbursement requests in excess of the amount supported by the then current security deposit will not be honored until the next required increment of funding is received and deposited.

Terms and Conditions

Such allowance for incremental funding of a security deposit is subject to the following:

- The Borrower has submitted a request in writing to the TLDA and has received written approval from the Assistant Secretary;
- The Borrower has provided staff with financial statements that demonstrate the Borrower's ability to make the approved incremental installments from current or projected cash flows; and

- The construction completion date for the project as outlined in the Loan Conditions section of the SRF loan agreement must be at least two (2) years after the date that the loan was approved by the TLDA.

The Borrower may request disbursements in any amount and at any frequency within the conditions listed above.

A Borrower who has been granted approval for incremental funding of the security deposit:

- Has no right to additional reimbursements of project costs under the SRF loan agreement until the required increment of the security deposit has been received and deposited by TLDA staff; and
- Is eligible to earn and receive interest only on the amount of the security deposit held by the TLDA.

Exhibit A

This example illustrates the concept of incremental funding. The funding for the security deposit is divided into four equal installments.

Loan Amount \$ 20,000,000
Term 20 years
Interest Rate 2.50%
Annual Debt Service \$ 1,271,767

Required Security Deposit	Amount Supported		
\$ 317,942	\$ 1	to	\$ 5,000,000
\$ 635,883	\$ 5,000,001	to	\$ 10,000,000
\$ 953,825	\$ 10,000,001	to	\$ 15,000,000
\$ 1,271,767	\$ 15,000,001	to	\$ 20,000,000

Modification of SRF Program Loan Repayment Schedules for Financially Distressed Borrowers

Purpose

The TLDA wants to be responsive to Borrowers who may be in financially difficult situations. However, the TLDA has a responsibility to ensure the integrity of the SRF program, which relies on the repayment of monies borrowed to fund future loans. As such, the TLDA must carefully consider any request from a Borrower which may impact the SRF program, including requests to modify loan repayment schedules.

Terms and Conditions

The TLDA will consider modification of SRF loan repayment schedules only if:

- (1) The Comptroller has filed a copy of the Borrower's audited financial statements with the Utility Management Review Board pursuant to Tenn. Code Ann. §7-82-703(a) or the Borrower's audit report with the Water and Wastewater Financing Board pursuant to Tenn. Code Ann. § 68-221-1010(a); or
- (2) A significant event beyond the control of the Borrower occurs and impacts the Borrower's ability to repay the SRF Loan, such as:
 - A natural disaster; or
 - Loss (or reduction in capacity) of a large customer (commercial, industrial, governmental); or
 - Similar unforeseen event despite prudent action having been taken; or
- (3) The TLDA deems such action to be for the benefit of the people of the state in the performance of essential public functions and that such action serves a public purpose in improving and otherwise promoting the health, welfare, and prosperity of the people of the state.

In considering a request to modify a SRF loan repayment schedule, the TLDA will take into account whether or not the Borrower has:

- Implemented or is about to implement a plan to adopt a multi-year rate schedule to address its financial difficulties;
- Rates sufficient to cover debt service on a new debt issuance for capital improvements necessary to bring the Borrower in compliance with any TDEC administrative orders, including, but not limited to: Agreed Orders, Commissioner's Orders, Director's Orders, or Consent Decrees;

- A history of timely debt service payments on the loan to the SRF program in accordance with the current payment schedule;
- A plan to attract new customers or to expand the existing customer base;
- A plan to reduce expenses or make efficiency improvements to the system; and
- A debt management policy compliant with the State Funding Board's directive under Tenn. Code Ann. § 9-21-151 that addresses actions to be taken to avoid default or to provide adequate rates to service debt (rates will be set to provide at least a 1.20x debt service coverage).

Such requests for modification of a SRF loan repayment schedule should be made in writing to the TLDA.

Relief

The TLDA may offer as relief a reduction or waiver of the interest due on the loan for a specified period of time. In the event of a disaster or catastrophic loss, additional measures may be considered on a case-by-case basis by the TLDA. However, no principal will be forgiven except as originally contemplated under federal directives and approved by the TLDA in the loan agreement.

A Borrower in financial distress with outstanding capital market securities may be required to disclose the financial distress as an event pursuant to SEC Rule 15c2-12. Borrowers should seek the advice of bond or disclosure counsel in determining what disclosure is appropriate.

Privately Owned For-Profit Community Public Water Systems

On April 20, 2015, Public Chapter No. 207 amended Tenn. Code Ann. § 68-221-1203(6) to allow privately owned for-profit community public water systems access to the Drinking Water State Revolving Fund. However, Private Systems are not eligible for loans from the Clean Water State Revolving Fund.

Terms and Conditions

Tennessee state law includes terms and conditions for Private Systems that seek Drinking Water SRF program funding.

Tenn. Code Ann. § 68-221-1206(f)(11) stipulates that loans may be made to Private Systems pursuant to 40 CFR Part 35; provided, that:

- No Private System shall be considered for loans with principal forgiveness under this program;

- Private Systems shall be categorized as one hundred percent (100%) ability to pay on the index established pursuant to § 68-221-1205;
- A Private System borrower shall have at least a debt/service coverage ratio of 1.25;
- Private Systems shall provide security determined by the TLDA to be acceptable to secure a loan under this part; and
- The TLDA has the authority to direct a Private System to the water and wastewater financing board for compliance as set forth in § 68-221-1009 and § 68-221-1010, and by the Comptroller of the Treasury.

At the time of the approval of this Policy and Guidance, no loans have been made to Private Systems nor have any applications been received. Therefore, the policies and guidance included in this document are not at this time applicable to Private Systems.

DRAFT

Adoption of Policy and Guidance

The TLDA adopted this Policy and Guidance on _____, 2016, effective on _____, 2016.

Vice Chair

Tennessee Local Development Authority

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